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Valencia, CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CALIFORNIA NURSES ASSOCIATION,
NATIONAL NURSES ORGANIZING COMMITTEE

and

Case 31-CB-012913

HENRY MAYO NEWHALL MEMORIAL
HOSPITAL

SUPPLEMENTAL DECISION, ORDER, and NOTICE TO SHOW CAUSE

On July 2, 2013, the Board issued a Decision and Order in this proceeding, which is reported at 359 NLRB 1391. The Charging Party filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit.¹

At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the Board issued an order setting aside the Decision and Order, and retained this case on its docket for further action as appropriate.²

¹ On July 29, 2013, the Respondent filed a Motion for Reconsideration with the Board asserting that the Board should remove the “like or related manner” language from its July 2, 2013 Decision and Order in light of the Board’s dismissal of the 8(b)(1)(A) allegation. On January 8, 2014, a properly constituted Board issued an Order Granting Motion for Reconsideration, reported at 360 NLRB 83, and modified the remedy accordingly.

² On October 16, 2017, the Charging Party filed with the Office of the Executive Secretary an Emergency Motion for a Decision in Case No. 31-CB-012913. On October 19, 2017, the Board issued an Order Clarifying specifying that the Board Order Granting

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the judge's decision and the record in light of the exceptions and briefs. We have also considered the vacated Decision and Order, and we agree with the rationale set forth there, as modified in this decision. Specifically, the complaint alleges that the Respondent violated Section 8(b)(1)(A) and (3) by printing and distributing to employees copies of the collective-bargaining agreement that contained a statement entitled "The *Weingarten* Rights" on the back cover. We affirm the judge's rulings, findings, and conclusions and adopt the judge's recommended Order regarding the Section 8(b)(3) allegation to the extent and for the reasons stated in the Decision and Order reported at 359 NLRB 1391, which we incorporate here by reference.³ We also adopt the judge's conclusion that deferral of any part of this case to arbitration under *Collyer Insulated Wire*, 192 NLRB 837 (1971), is unwarranted.⁴

Motion for Reconsideration, reported at 360 NLRB 83, is the final Order in this case. Subsequently, on November 10, 2017, the Charging Party filed a Motion for a Final Decision on the 8(b)(1)(A) Allegation and Request for Further Clarification. On December 20, 2017, the Respondent filed an opposition to the motion. Upon further consideration, we have concluded that the Board Order Granting Motion for Reconsideration was not a final disposition of the matters in this case. Accordingly, we vacate the October 19, 2017 Order Clarifying and grant the Charging Party's motion to review the substantive findings in the vacated July 2, 2013 Decision and Order.

³ Because we agree with the finding in the vacated Decision and Order that the Respondent's conduct was "contrary to the settled understanding of the parties on the issue of cover text," we find it unnecessary to pass on the vacated Decision and Order's rejection of the judge's additional rationale that the Respondent also unlawfully modified the contractual disciplinary procedure in the parties' collective-bargaining agreement.

⁴ See *Service Employees (Alta Bates Medical Center)*, 321 NLRB 382, 383-384 (1996) (finding deferral inappropriate where "the dispute does not center on an interpretation or application of the collective-bargaining agreement[, but r]ather ... is a statutory dispute:

With respect to the Section 8(b)(1)(A) allegation, the complaint alleges that “The *Weingarten* Rights” statement implies that employees must request a union representative during investigatory interviews, and therefore employees are not free to exercise their Section 7 right to refrain from union activity. The judge found that employees would reasonably read “The *Weingarten* Rights” statement in that manner. Reversing the judge, the Board in the vacated Decision and Order dismissed the allegation, finding that employees would not reasonably understand “The *Weingarten* Rights” statement to restrain their right to forgo union representation at a disciplinary interview. 359 NLRB at 1392. At the time of the judge’s decision and the Board’s vacated Decision and Order, the issue whether a work rule or policy has been unlawfully maintained was resolved based on the “reasonably construe” prong of the analytical framework set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). In the vacated Decision and Order, the Board cited *Lutheran Heritage* to find that “The *Weingarten* Rights” statement is susceptible to only one reasonable interpretation. On December 14, 2017, the Board overruled the *Lutheran Heritage* “reasonably construe” test and announced a new standard that applies retroactively to all pending cases. *The Boeing Co.*, 365 NLRB No. 154, slip op. at 14-17 (2017).

Having duly considered the matter, we find it appropriate to sever and retain for further consideration complaint paragraphs 6(b), 6(e), 6(f), and 7 as to whether the Respondent violated Section 8(b)(1)(A) by unilaterally printing “The *Weingarten* Rights” statement on the back cover of its collective-bargaining agreement with the Charging

whether the [u]nion may include certain material in a collective-bargaining agreement which has not been agreed to by the [e]mployer”).

Party.⁵ We also issue below a notice to show cause why the allegation that “The *Weingarten* Rights” statement violated Section 8(b)(1)(A) should not be remanded to the judge for further proceedings in light of *Boeing*, including, if necessary, the filing of statements, reopening the record, and issuance of a supplemental decision. The judge's recommended Order, as modified here, is set forth in full below.⁶

ORDER

The Respondent, California Nurses Association, National Nurses Organizing Committee, Oakland, California, its officers, agents, and representatives, shall

⁵ “The *Weingarten* Rights” statement read as follows:

The *Weingarten* Rights

The Supreme Court has ruled that an employee is entitled to have a CNA Representative present during any interview which may result in discipline. These rights are called your Weingarten Rights.

You must request that a CNA rep be called into the meeting.

You must have a reasonable belief that discipline will result from the meeting.

You have the right to know the subject of the meeting and the right to consult your CNA rep prior to the meeting to get advice.

Do not refuse to attend the meeting if a rep is requested but denied. We suggest you attend the meeting and repeatedly insist upon your right to have a CNA rep present. If this fails, we suggest that you not answer questions and take notes.

⁶ Member McFerran did not participate in the Board’s decision reported at 359 NLRB 1391, or in the Board’s order reported at 360 NLRB 83, and she expresses no view whether Sec. 8(b)(1)(A) of the Act or the standard announced in *Boeing* properly applies in the particular circumstances of this case. She nevertheless agrees it is appropriate to solicit the parties’ views on whether the allegation that “The *Weingarten* Rights” statement violated Sec. 8(b)(1)(A) should be remanded to the judge for further proceedings.

1. Cease and desist from printing and maintaining copies of the collective-bargaining agreement containing additional language contrary to the agreement of the parties (e.g., including on the back cover a statement entitled "The *Weingarten* Rights") without the consent of the Hospital.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Reprint and deliver to the Henry Mayo Newhall Memorial Hospital, at the Respondent's sole expense, copies of the collective-bargaining agreement without "The *Weingarten* Rights" statement or any other additional language printed thereon or appended thereto, unless the Hospital agrees to such language.

(b) Within 14 days after service by the Region, post at its union offices and meeting halls in Glendale, California, copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Within 14 days after service by the Region, deliver to the Regional Director for Region 31 signed copies of the notice in sufficient number for posting by Henry Mayo Newhall Memorial Hospital at its Valencia, California facility, if it wishes, in all places where notices to employees are customarily posted.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 31 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the October 19, 2017 Order Clarifying in Case 31-CB-012913 is vacated.

IT IS FURTHER ORDERED that complaint paragraphs 6(b), 6(e), 6(f), and 7 are severed and retained for further consideration.

Further, NOTICE IS GIVEN that any party seeking to show cause why the issue whether the allegation that “The *Weingarten* Rights” statement violated Section 8(b)(1)(A) should not be remanded to the administrative law judge must do so in writing, filed with the Board in Washington, D.C., on or before November 28, 2018 (with affidavit

of service on the parties to this proceeding). Any briefs or statements in support of the motion shall be filed on the same date.

Dated, Washington, D.C., November 14, 2018.

John F. Ring, Chairman

Lauren McFerran, Member

William J. Emanuel, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT print and maintain copies of the collective-bargaining agreement containing additional language contrary to the agreement of the parties (e.g., including on the back cover a statement entitled "The *Weingarten* Rights") without the consent of the Hospital.

WE WILL reprint and deliver to the Henry Mayo Newhall Memorial Hospital, at our sole expense, copies of the collective-bargaining agreement without "The *Weingarten* Rights" statement or any other additional language printed thereon or appended thereto, unless the Hospital agrees to such language.

California Nurses Association, National
Nurses Organizing Committee

The Board's decision can be found at www.nlrb.gov/case/31-CB-012913 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.